

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 437 OF 2004.

Ashok Hanmant Chorge & others. ... Appellants.
Versus.

Tanubai Eknath Chorge. ... Respondent.

Shri G.S.Godbole for the Appellants.

**CORAM : ABHAY S.OKA, J.
DATED : 20th November, 2007.**

P.C.:

1. Heard Shri Godbole for the Appellants. The Appellants are the original Defendants. A decree for partition has been passed against the Appellants by the trial Court which has been confirmed by the Appellate Court.

2. The learned Advocate for the Appellants has invited my attention to the finding recorded by the trial Court on the issue of limitation. He pointed that by a registered document executed in the year 1951, the Respondent-Plaintiff was given an area of 29 gunthas in lieu of her maintenance. He pointed out that the registered document has been proved and submitted that the Respondent after demise of her husband has been all along staying in the house of her parents. He submitted that though there is elaborate discussion by the trial Court on the plea of limitation, the Appellate Court has not done its duty as plea of limitation has not been even considered. He, therefore, submitted that the Appellate Court has committed an error in setting aside

the decree passed by the trial Court.

3. I have considered the submissions. The Appellate Court has held that there is no plea of ouster of the Respondent from the joint family in the written statement filed by the Appellants and in the deposition the witness examined by the Appellants does not state that the Respondent-Plaintiff was ousted from the joint family property. My attention has been invited to the relevant part of the written statement and in particular paragraph 5 thereof. A perusal of paragraph 5 of the written statement shows that the Appellate Court was right in coming to the conclusion that a specific plea of ouster does not find place in the written statement. In view of these findings, there is no question of attracting bar of limitation.

4. The Appellate Court has recorded a concession by the Advocate for the Appellants that if the Respondent proves that she is entitled to seek relief of partition, calculation of the shares made by the trial Court is correct.

5. No substantial question of law arises. The Second Appeal is accordingly dismissed.

Judge .